

IP 94-0057-CR 1 T/F USA v Ruth
Magistrate Kennard P. Foster

Signed on 2/21/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 94-57-CR-01 (T/F) and
)	IP 02-81-CR-01 (T/F)
GEORGE HERMAN RUTH,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to Orders entered by the Honorable John Daniel Tinder, Judge, on December 23, 2005, designating this Magistrate Judge to conduct hearings on the Petitions for Summons or Warrant for Offender Under Supervision filed with the Court on December 23, 2005, in each of the above-captioned cases, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held February 9, 2005, in accordance with Title 18 U.S.C. §3583 and Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Ruth appeared in person and with his appointed counsel, Bill Dazey. The government appeared by Susan Dowd, Assistant United States Attorney. Dwight Wharton, U. S. Parole and Probation officer, appeared and participated.

The Court conducted the following procedures in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Bill Dazey, Office of Indiana Federal Defender, was appointed to represent Mr. Ruth in regard to the pending Petitions for Revocation of Supervised Release.

2. A copy of the Petitions for Revocation of Supervised Release was provided to Mr. Ruth and his counsel who informed the Court that they had read and understood the specifications of violation, which specifications are the same in each respective cases, and waived further reading thereof.

3. Mr. Ruth was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petitions.

4. Mr. Ruth was informed he would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Ruth was informed he had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. Mr. Ruth was informed that if the preliminary hearing resulted in a finding of probable cause that Mr. Ruth had violated an alleged condition or conditions of his supervised release set forth in the Petitions, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on December 23, 2005.

7. Mr. Dazey stated that George Herman Ruth desired to waive the preliminary examination and proceed to the revocation phase of the proceedings this date. Mr. Ruth then waived the preliminary hearing in writing and was held to answer in each case.

8. All parties acknowledged their readiness to proceed with the revocation of supervised release hearing in each case. The Court further took judicial notice of all relevant and material pleadings and papers in both of the above-captioned cases. The violations of supervised release set

forth as specifications 1-4, in each of the Petitions for Warrant or Summons for an Offender Under Supervision, filed December 23, 2005 are as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

1(a) - George Herman Ruth spent the final two months of his federal imprisonment sentence(s) at the Volunteers of America (VOA) Community Corrections Center. On June 30, 2005, a representative from VOA contacted the probation officer regarding a possible vehicle purchase made by the defendant. Mr. Ruth submitted a request for driving privileges to VOA and provided questionable documents in support of his request. Said documents were obtained by the probation officer. A Used Vehicle Order dated June 17, 2005, listed the dealer as Norben Auto and the defendant as the purchaser of a 2002 Ford Explorer for \$17,200. The order indicated the vehicle was paid in full and the salesman and dealer signatures were "Norman Flick." In addition, there was a copy of a State Farm Automobile Insurance policy listing coverage for Mr. Ruth in the aforementioned vehicle. The policy was also effective on June 17, 2005, and it indicated a six-month premium of \$543.74 was paid via credit card.

On July 13, 2005, Mr. Ruth was released from VOA and his supervised release terms began. He had an initial office visit with the probation officer on July 15, 2005. During that meeting, the defendant denied owning a vehicle. When asked how he traveled to and from work, he stated his supervisor, Randolph Perterious, provided all his transportation. Due to the outstanding restitution amounts, Mr. Ruth subsequently completed and signed a monthly cash flow and net worth statements that indicated he did not own a vehicle.

During a home visit on August 31, 2005, the defendant voluntarily informed the probation officer he purchased a 2002 Ford Explorer for \$18,300 approximately two weeks prior. He was verbally reprimanded for making the alleged purchase without the approval of the probation officer. Mr. Ruth subsequently submitted a Used Vehicle Order dated August 17, 2005, that listed the dealer as Norben Auto. It showed a total purchase price of \$19,398 and indicated the

title was held by National City Bank. On this particular order, the salesman and dealer signatures were "John Diemer."

Bureau of Motor Vehicles records indicate the 2002 Ford Explorer was originally purchased from Pearson Ford by Norman Flick on September 13, 2002. On July 21, 2005, the title of the vehicle was transferred to Norben Auto. On that same date, it was then purchased by George Ruth. According to the Indiana Department of Revenue, Norben Auto reported the vehicle in question was obtained by the defendant via a trade. Specifically, State Form 108 indicates George Ruth received a \$12,000 trade-in allowance from a 2002 Cadillac toward the purchase of the Ford Explorer for \$13,000. With the trade-in allowance, the balance due on the purchase would be \$1,000.

The above-referenced documentation submitted by the defendant and obtained by the probation officer are available for the Court's perusal. The true manner in which Mr. Ruth obtained possession of the 2002 Ford Explorer is not known. At a minimum, he provided false information and was not truthful concerning the purchase of said vehicle.

1(b) - The defendant stated he is currently leasing the residence at 7735 Wellesley Drive North, Indianapolis, IN 46219. The probation officer requested written verification of his leasing arrangement. Mr. Ruth submitted a Residential Lease which indicates he is leasing the premises from "JoAnn Huntley" for \$700 per month, and payments are to be sent to 1244 North Illinois Street.

According to U. S. Bankruptcy Court documents, 7735 Wellesley Drive North is owned by Norman Flick. On April 18, 2005, Mr. Flick filed for Chapter 7 bankruptcy and he listed the aforementioned property as being leased to George Ruth on a month-by-month basis. In addition, bankruptcy documents indicate the true resident of 1244 North Illinois Street is Norman Flick and his car dealership license lists the same address as his personal residence. Furthermore, Mr. Flick reported his residence as 1244 North Illinois Street, #116, while on federal supervision.

The above-referenced documentation submitted by Mr. Ruth and obtained by the probation officer are available for the Court's perusal. Based on the information presented by the defendant, he is/was not truthful about his living arrangements.

The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

Since his arrival at the Community Corrections Center and throughout his brief tenure on supervision, Mr. Ruth has reported he is employed as a manager for an upcoming night club and restaurant. The alleged establishment, The Hot Spot, 3515 Southeastern Avenue, Indianapolis, IN 46203, is not open for business. However, he has submitted questionable paystubs a verification of employment. The defendant stated until it is opened, he was overseeing renovation of the building, seeking personnel, and securing equipment for the business. He indicated his immediate supervisor, Randolph Perterious, is also the owner of the business. On two different occasions in August and September 2005, the probation officer stopped by the aforementioned address. It was apparent there was some form of renovation occurring inside the business, but no contact was made with Mr. Ruth. Since that time, there has been no activity at 3515 Southeastern Avenue and The Hot Spot is not open for business.

Marion County Circuit records indicate the property at 3515 Southeastern Avenue is the subject of a civil lawsuit in Case No. 49D03-0403-PL-000625. In short, there is a dispute as to the actual owner of said property. Investment Funding Company and Norman Flick are named as the plaintiff in the original complaint filed against three other individuals on March 23, 2004. After Mr. Flick filed for bankruptcy, the withdrew from the case and ownership fo Investment Funding Company was transferred to "Joanne Huntley," who is now the plaintiff. The civil case is currently pending and set for bench trial on May 1, 2006. It would appear the title dispute explains the recent lack of activity at 3515 Southeastern Avenue, and it explains the reason The Hot Spot is not open for business as anticipated and described by George Herman Ruth.

On August 31, 2005, the probation officer requested Mr. Ruth provide contact information for his alleged employer, Randolph Perterious. The defendant stated Mr. Perterious resided at 1244 N. Illinois Street, #116, and he could be reached at 317/418-7009. As previously stated, the address actually belongs to Norman Flick. In addition, the telephone number he provided for Randolph Perterious is actually the number for Norben Auto, 5269 West Washington Street, Indianapolis. Norben Auto is owned by Norman Flick and 418-7009 is the telephone number posted outside of his car lot.

Based on the claims made by Mr. Ruth, the questionable paystubs, and the subsequent investigation by the probation officer, the defendant's occupation cannot be verified. His true means of financial support and employment status are not known.

- 3 **The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.**

As stated in Violation Nos. 1 and 2, George Herman Ruth's acquisition of the 2002 Ford Explorer involved Norman Flick. His residence is actually owned by Norman Flick. In addition, the contact information the defendant provided for employment verification belongs to Norman Flick. Although Mr. Ruth attempted to conceal his association with Mr. Flick, it is apparent through information provided by the defendant and subsequent documentation obtained by the probation officer the two are associating in some capacity.

Norman Flick has an extensive criminal history that dates back to the 1950s, and he was/is a "reputed organized crime figure." Mr. Flick's prior state felony convictions are as follows: 9/15/55-Receiving Stolen Goods; 1/27/82-Forgery (2 counts), Conspiracy to Commit Forgery (2 counts), Official Misconduct (2 counts), and Habitual Offender. His prior federal felony convictions are as follows: 6/27/74-Conspiracy, and Interstate Transportation of Forged Securities (8 counts); 12/17/81-Fraud and Swindles (2 counts); 12/17/81-Conspiracy to Defraud the United States, and Interstate or Foreign Shipment by Carrier. It is noted Norman Flick completed his federal supervision terms in the Southern District of Indiana on February 8, 2003.

George Ruth has not received permission by the probation officer to associate with Norman Flick,

- 4 **The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.**

Since Mr. Ruth began his periods of supervised release, he has opened several new credit charges and liens of credit without the approval of the probation officer. Credit records dated December 16, 2005, indicate he has opened new accounts with at least eight different creditors. The cumulative balance owed to said creditors is

\$87,583. The specific companies holding the accounts are as follows: HSBC Mortgage Company (real estate); National City (auto); Charter Bank One (line of credit); Chase Bank (charge account); Citibank USA (credit card); Lowe's (line of credit); Sam's Club (charge account); and First Data Merchant (lease). Of the listed creditors, Mr. Ruth has approximately \$13,128 available before he reaches his maximum credit limits.

George Ruth has not received approval from the probation officer to incur new credit charges or open additional lines of credit.

As previously noted, the defendant resided at the Volunteers of America (VOA) Community Corrections Center as a Bureau of Prisons inmate from May 19, 2005, to July 13, 2005. For the Court's information, he opened at least six credit accounts while a resident prior to his release to supervision. It is noted the cumulative balance owed on those accounts is \$41,366. The specific companies holding the accounts are as follows: Capitol One (auto); Discover Financial (credit card); Citicard (credit card); Care Credit (charge); and Citibank USA (credit card). Of these creditors, Mr. Ruth has approximately \$13,634 available before he reaches his maximum credit limits. It is recognized the accounts opened while a VOA resident does not constitute violations of supervised release. The latter information simply demonstrates the extent of the defendant's credit acquisition activities.

9. The government called Dwight Wharton, U. S. Parole and Probation officer. Mr. Wharton testified regarding the four specifications of alleged violation and, in support of his testimony, the government offered eighteen exhibits, many of multiple pages, which were accepted into evidence without objection. Mr. Wharton was cross-examined by Mr. Ruth's counsel.

10. Mr. Ruth testified on his own behalf and he offered one exhibit, a copy of a cashier's check dated January 18, 2006, in the amount of \$22,000.00, remitted by Jean E. Ruth, to the order of George H. Ruth. That exhibit was admitted without objection.

11. The government called, in rebuttal, Joann Huntley. In short, Ms. Huntley's testimony contradicted and refuted Mr. Ruth's testimony regarding his asserted employment by her and/or the nature of their business and personal affiliation.

12. The government has carried its burden of proving all pled specifications of violation of supervised release, delineated the Petitions for Summons or Warrant for Offender Under Supervision, filed with the Court on December 23, 2005, in each of the above-captioned cases, by clear and convincing evidence. To the extent that Mr. Ruth's testimony contested the specifications of violation of his conditions of supervised release, the Court finds his testimony incredible.

The parties did not stipulate to the following but the Court makes the following findings and conclusions:

- 1) Mr. Ruth has a relevant criminal history category of V. *See, U.S.S.G. §7B1.4(a).*
- 2) The most serious grade of violation committed by Mr. Ruth constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Ruth is 7-13 months.

The Court having heard the evidence and/or arguments of the defendant and the government, now finds that Mr. Ruth violated the specified conditions of supervised release as delineated in the four specifications set forth in the Petitions to Revoke his supervised release, filed December 23, 2005 in each of the above-captioned cases.

The defendant's supervised release is therefore **REVOKED** and George Herman Ruth is sentenced to the custody of the Attorney General or his designee for a period of 13 months, which shall run concurrently in both cases. The service of the sentence shall begin immediately. At the conclusion of Mr. Ruth's term of confinement, he shall be placed on supervised release for 23 months, which shall run concurrently in both cases. In addition to the conditions of release previously imposed, the following conditions are to be included: (a) Mr. Ruth shall not incur any

new credit charges or open any additional lines of credit, unless approved in advance by his supervising probation officer; and (b) Mr. Ruth will not become self-employed.

The Magistrate Judge requests that Dwight Wharton, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, District Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served with a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of facts and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Mr. Ruth's supervised release and the sentence imposed of imprisonment of 13 months in the custody of the Attorney General or his designee, which will run concurrently in these two cases. Further, upon Mr. Ruth's release from confinement, he will be subject to a term of supervised release for 23 months with special conditions: (a) he will not incur new credit charges or open additional lines of credit, unless approved by the probation; and (b) he will not become self-employed.

IT IS SO RECOMMENDED this 21st day of February, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

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